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Supreme Court, U.S.
FILED
SEP 25 1998
OFFICE OF THE CLERK

No. 98-381

In The

Supreme Court of the United States

October Term, 1997

RONALD E. EGAN, M.D.,

Petitioner,

v.

ATHOL MEMORIAL HOSPITAL, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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14 pp

PARTIES TO THE PROCEEDING

Petitioner omitted Robert G. Knight, M.D. and Yong Min Chi, M.D. from his list of the parties to the proceeding in the court whose judgment he seeks to have reviewed. Pursuant to Supreme Court Rule 29.6, respondent Athol Memorial Hospital states that its parent company is Greater Quabbin Health System, Inc. and that it has no nonwholly owned subsidiaries.

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CITATIONS OF THE OPINIONS AND JUDGMENTS BELOW

The Memorandum and Order of the United States District Court for the District of Massachusetts allowing respondents' motion for summary judgment on all counts of petitioner's complaint is reported at 971 F. Supp. 37 (D. Mass. 1997), 1997 U.S. Dist. LEXIS 10023, 1997-1 Trade Cas. (CCH) ¶ 71809 (D. Mass. March 28, 1997). A copy of that Memorandum and Order is attached to the Petition for a Writ of Certiorari (hereinafter the "Petition") as Appendix A (Petition 1a-22a). Judgment entered in the district court on March 31, 1997. A copy of that judgment was omitted from the Petition and is attached to the Appendix to this brief (hereinafter "App.") as Appendix 1 (App. 1). The district court's judgment was affirmed by the United States Court of Appeals for the First Circuit (hereinafter the "Court of Appeals") in an unpublished *per curiam* opinion. See *Egan v. Athol Memorial Hospital*, 134 F.3d 361 (1st Cir. 1998) (table format), reported in full at 1998 U.S. App. LEXIS 220, 1998-1 Trade Cas. (CCH) ¶ 72032 (1st Cir. January 6, 1998). A copy of that opinion is attached as Appendix C to the Petition (Petition 24a-25a) and a copy of the judgment entered in the Court of Appeals in accordance with that opinion is attached to the Petition as Appendix B (Petition 23a). An unpublished *per curiam* opinion of the Court of Appeals in connection with respondents' separate appeal of the district court's denial of respondents' post-judgment motion for an award of costs and attorneys' fees is reported in full at 1998 U.S. App. LEXIS 12496 (1st Cir. June 4, 1998). A copy of that opinion was omitted from the Petition and is attached to this brief as Appendix 2

(App. 2-3). A copy of the judgment entered in connection with that opinion is attached to the Petition as Appendix D (Petition 26a).

STATEMENT OF THE CASE

Because the Petition fails to set forth any of the material facts or to recite accurately the procedural history of this matter, respondents submit the following summary statement of the case:

On October 7, 1994, petitioner filed a complaint for damages and injunctive relief against Athol Memorial Hospital (hereinafter the "Hospital"), its president, and ten (10) doctors on its medical staff. Petition 1a. The complaint was based on actions taken in a medical "peer review" process which in 1994 resulted in termination of petitioner's medical staff membership and privileges at the Hospital. *Id.* On April 1, 1996, respondents jointly moved for summary judgment on all counts. *Id.* at 1a-2a. Petitioner opposed the motion for summary judgment. *Id.* On March 28, 1997, the district court issued a Memorandum and Order. *Id.* at 1a-22a. After finding that the respondents were immune from damage liability pursuant to the Health Care Quality Improvement Act of 1986 (hereinafter "HCQIA"), 42 U.S.C. § 11111 (1995) *et seq.*, and finding that respondents were ir any event entitled to summary judgment on the merits of all of petitioner's claims, the district court granted respondents' motion on all counts. Petition 13a-14a, 22a. Judgment entered for respondents on March 31, 1997. App. 1. Petitioner filed a notice of appeal from that judgment,

and, on January 6, 1998, the Court of Appeals affirmed the judgment in an unpublished opinion. Petition 24a-25a. Judgment entered in the Court of Appeals on that date. Petition 23a.

Meanwhile, on April 14, 1997, respondents moved the district court, pursuant to Fed. R. Civ. P. 54(d) and the fee-shifting provision of HCQIA, 42 U.S.C. § 11113 (1995), for an award of the "cost of the suit," including reasonable attorneys' fees, of defending against petitioner's claims. App. 2-3. On April 24, 1997, petitioner filed an opposition to the motion for attorneys' fees and costs. *Id.* On August 12, 1997, the district court denied respondents' motion. *Id.* Respondents filed a notice of appeal with respect to that order on September 5, 1997. *Id.* The district court's order denying respondents' motion was affirmed by the Court of Appeals in an unpublished opinion on June 4, 1998, and judgment entered in the Court of Appeals in connection with that appeal on that date. App. 2-3; Petition 26a. Petitioner filed his Petition on September 1, 1998.

REASONS FOR DENYING THE WRIT

The Court should deny the Petition for the following reasons:

1. The Petition is untimely. This case generated two appeals and, as a result, two judgments entered in the Court of Appeals. The first appeal, Court of Appeals No. 97-1565, was by petitioner from the underlying judgment against him. Judgment entered on that appeal, in accordance with the Court of Appeals unpublished *per curiam*

opinion, on January 6, 1998. The second appeal, Court of Appeals No. 97-2041, was filed by respondents in connection with the district court's denial of respondents' post-judgment motion for costs and attorneys' fees. Judgment entered on that appeal, in accordance with a second unpublished *per curiam* opinion, on June 4, 1998. Petitioner was required to file his petition for a writ of certiorari within ninety (90) days of the entry of the first judgment – not the second judgment – in the Court of Appeals. Sup. Ct. R. 13. The time to petition for a writ of certiorari begins to run anew from a second judgment entered by the Court of Appeals in the same case *only* if the second judgment "changes matters of substance, or resolves a genuine ambiguity, in a judgment previously rendered." *Federal Trade Comm'n v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211 (1952) (citations omitted). "The test is a practical one. The question is whether the lower court, in its second order, has disturbed or revised legal rights and obligations which, by its prior judgment, had been plainly and properly settled with finality." *Id.* at 212 (citations omitted). Here, the first judgment entered by the Court of Appeals on January 6, 1998, addressed petitioner's appeal of the underlying judgment against him on the merits of the case. The second judgment dealt with the appeal filed by respondents with respect to the denial of their post-judgment motion for costs and attorneys' fees. Not only did the second appeal not change matters of substance, or resolve a genuine ambiguity, in the first judgment, it addressed completely different legal issues, rights and obligations. *See Federal Communications Comm'n v. League of Women Voters of Cal.*, 468 U.S. 364, 373

n.10 (1984) (award of attorneys' fees is "uniquely separable from the cause of action that is settled by a court's judgment on the merits"). The second judgment, therefore, did not extend or renew the time for petitioner to seek a writ of certiorari. Because petitioner did not file the Petition within ninety (90) days of the date of entry of the first judgment of the Court of Appeals (January 6, 1998), his petition is untimely. This Court, therefore, lacks jurisdiction over the Petition and should deny it. See *Department of Banking v. Pink*, 317 U.S. 264, 268 (1942) (untimely petition in civil case "must . . . be denied for want of jurisdiction").

2. The Petition fails to provide a concise statement of the basis for jurisdiction in this Court and omits many of the statutory provisions involved in this case. *See* Sup. Ct. R. 14.1(e) & (f). For example, much of the district court's decision granting respondents' motion for summary judgment, which was affirmed by the Court of Appeals for essentially the reasons stated by the district court, rested on the application of the immunity provisions of HCQIA, 42 U.S.C. § 11111 (1995), *et seq.*, to the facts of this case. The Petition fails to identify or address this statutory provision. The Petition also fails to present in any coherent or complete fashion "the facts material to consideration of the questions presented" as required by Rule 14.1(g). In sum, the Petition fails "to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration" and should be denied. Sup. Ct. R. 14.4.

3. It is clear from a review of the questions presented and the reasons for granting certiorari stated in the Petition that there is no basis for the Court to grant a

writ of certiorari in this case. Indeed, petitioner has made no argument that the Court of Appeals entered a decision in conflict with a decision of another United States court of appeals, decided an important federal question in a way that conflicts with a decision by a state court of last resort, or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for the exercise of this Court's supervisory power. *See* Sup. Ct. R. 10. Nor has petitioner argued that the Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions in this Court. *Id.* In fact, petitioner's argument as to why certiorari should be granted in this case makes no sense. *See* Sup. Ct. R. 14.4. The Petition, for example, refers to a directed verdict being entered in this case and relies almost exclusively on an argument that the district court erred in refusing to admit certain evidence proffered by petitioner. Petition 4, 8-13. The district court, however, granted a motion for summary judgment – not a directed verdict – and did not refuse to admit or consider any evidence presented by petitioner. Petition 1a-22a. The decision of the Court of Appeals was factually and legally correct, and petitioner has presented absolutely no "compelling reasons" why a writ of certiorari should be granted with respect to that decision. Sup. Ct. R. 10.

CONCLUSION

The Petition was not filed within the jurisdictional time limits, fails to present with any accuracy, brevity or clarity what is essential to ready and adequate understanding of the points requiring consideration, and does not otherwise present any issue which warrants review by this Court. For all of these reasons, the Petition should be denied.

Respectfully submitted,

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APPENDIX 1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

RONALD E. EGAN, Plaintiff(s), v. ATHOL MEMORIAL HOSPITAL, et al., Defendant.	)	CIVIL ACTION NO. 94-40158-NMG

JUDGMENT

GORTON, D.J.

In accordance with this Court's Memorandum and Order issued on *March 28, 1997*, allowing the defendants' Motion for Summary Judgment, it is hereby ORDERED;

Judgment for the defendants.

BY THE COURT,

/s/ Deborah F. Shattuck
Deputy Clerk in Charge

DATED: March 31, 1997

APPENDIX 2

[NOT FOR PUBLICATION – NOT TO BE CITED AS PRECEDENT]

United States Court of Appeals
For the First Circuit

No. 97-2041

RONALD E. EGAN,

Plaintiff, Appellee,

v.

ATHOL MEMORIAL HOSPITAL, ET AL.,

Defendants, Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Nathaniel M. Gorton, *U.S. District Judge*]

Before

Torruella, *Chief Judge*,
Boudin and Stahl, *Circuit Judges*.

Ronald E. Egan on brief pro se.

Francis D. Dibble, Jr., J. Michael Scully and *Bulkley, Richardson and Gelinas* on brief for appellants Athol Memorial Hospital.

Gerard R. Laurence, Karyn Polito and *Milton, Laurence & Dixon* on brief for appellant Yong Min Chi, M.D.

June 4, 1998

Per Curiam. We have carefully reviewed the briefs and the record in this case and conclude that the district court did not abuse its discretion in denying the motion of appellants for costs and fees under 42 U.S.C. § 11113. *See Maine Audobon Soc'y v. Purslow*, 907 F.2d 265, 269 (1st Cir. 1990) ("[w]here evaluative judgments in discretionary matters are concerned, the trier's choice among plausible alternatives" cannot amount to abuse of discretion).

The motion of appellants for attorneys' fees filed in this court is *denied* and all other pending motions are *denied* as moot.

The judgment of the district court is *affirmed*. No costs.